

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs July 19, 2006

**JASPER D. LEWIS v. CHERRY LINDAMOOD, WARDEN, AND
STATE OF TENNESSEE**

**Appeal from the Circuit Court for Wayne County
No. 13785 Robert Holloway, Judge**

No. M2005-02104-CCA-R3-HC - Filed August 31, 2006

The petitioner, Jasper D. Lewis, appeals from the Wayne County Circuit Court's denial of his petition for habeas corpus relief. He claims that the life sentence he is serving for a first degree murder conviction is void because it designates him a Range I offender with thirty percent release eligibility. We hold that the lower court erred in dismissing the petition, and we reverse and remand the case with instructions for the Wayne County Circuit Court to grant the petition and transfer the case to the Davidson County Criminal Court for correction of the judgment to reflect the proper release eligibility.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed;
Remanded**

JOSEPH M. TIPTON, J., delivered the opinion of the court, in which ALAN E. GLENN, J., and J.S. DANIEL, SR. J., joined.

Jasper D. Lewis, Clifton, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; and Rachel E. Willis, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

In 1995, the petitioner was convicted of first degree murder and robbery in a jury trial in Davidson County Criminal Court. See State v. Jasper D. Lewis, No. 01C01-9604-CR-00162, Davidson County (Tenn. Crim. App. Apr. 23, 1999), app. denied (Tenn. Oct. 16, 2000) (not for citation). He filed his habeas corpus petition in 2005, in which he alleged that his life sentence was illegal because the law existing at the time of sentencing did not provide for Range I, thirty percent release eligibility for a life sentence. The state moved for summary dismissal of the petition on the basis that the petitioner had not stated a cognizable claim for relief. The state took the position that

the first degree murder judgment was not void but contained a clerical error. The lower court granted the state's motion to dismiss without making any specific findings.

A petition for the writ of habeas corpus may only be brought if the judgment is void or the sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). However, if the claimed illegality renders the judgment or sentence voidable, rather than void, no relief can be granted. Id. at 161. "If the face of the record shows that the court did not have jurisdiction, then the judgment is void." Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998). A sentence imposed in direct contravention of a statute is illegal and therefore void. Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000). If the petition fails to establish that the challenged judgment is void, the trial court may summarily dismiss it. See T.C.A. § 29-21-109; Hickman v. State, 153 S.W.3d 16, 20 (Tenn. 2004). We review a trial court's dismissal of a petition for habeas corpus relief de novo. Hart v. State, 21 S.W.3d 901, 903 (Tenn. 2000).

The petitioner contends the lower court erred in denying habeas corpus relief, claiming that the judgment is void because it expresses an illegal sentence. The state counters that the petitioner's sentence is not void because it was the result of a jury verdict, not a guilty plea, and any error is merely clerical and not jurisdictional in nature. The state relies heavily on Charles Damien Darden v. Tony Parker, No. W2005-00982-CCA-R3-HC, Lake County (Tenn. Crim. App. Nov. 30, 2005) (mem. op.), app. denied (Tenn. App. Apr. 24, 2006), to support its argument. At first blush, Charles Damien Darden ostensibly does lend some support to the state's argument. In that case, a panel of this court affirmed the dismissal of a habeas corpus petition filed by a petitioner who claimed a void judgment because his life sentence was improperly designated for thirty percent release eligibility. Because the petitioner's conviction resulted from a jury verdict, rather than a guilty plea, the panel reasoned that the appropriate remedy was amendment of the judgment. However, the panel ultimately did not resolve the issue on its merits because of a deficiency in the appellate record regarding whether the defendant's judgment had already been amended. That said, Charles Damien Darden was a decision by memorandum opinion, and as such, it is not entitled to any precedential or persuasive weight. See Tenn. Ct. Crim. App. R. 20(2) (memorandum opinions "shall not be published, and shall not be cited or relied on in any unrelated case unless to establish a split of authority"). We acknowledge, however, that other panels of this court have accepted the guilty plea/jury verdict distinction as determinative of whether a conviction is void if the sentence imposed is an illegal one. See Thomas Braden v. Ricky Bell, No. M2004-01381-CCA-R3-HC, Davidson County (Tenn. Crim. App. Mar. 9, 2005) (majority holding that petitioner's three aggravated rape sentences with thirty percent release eligibility classification, rather than one hundred percent for multiple rapist classification, were not void but contained mere clerical error because petitioner was convicted by jury, rather than upon guilty plea); see also Barry Sotherland v. State, No. M2005-00565-CCA-R3-HC, Marshall County (Tenn. Crim. App. Feb. 17, 2006) (after finding sufficient grounds for affirming lower court's summary dismissal of habeas corpus petition, reasoning that petition was also subject to dismissal because erroneous sentences were product of jury verdict conviction, rather than guilty plea, in accord with majority holding in Thomas Braden). Cf. Stephen Lajuan Beasley v. State, No. E2005-00367-CCA-MR3-HC, Bledsoe County (Tenn. Crim. App. Dec. 27, 2005) (holding that term in judgment sentencing defendant to life without

possibility of parole which provided for thirty percent release eligibility was clerical error and did not render judgment void, noting that sentence was not imposed by trial court and that defendant had no actual expectation of release given nature of sentence), app. denied (Tenn. May 30, 2006).

Having considered the state's contention, we are not persuaded that the distinction of judgments based upon guilty pleas and those based upon jury verdicts is of any legal significance in determining whether habeas corpus relief will lie for expression of sentences which fall outside the parameters of the sentencing act. See Jackie William Crowe v. James A. Bowlen, No. E2005-01210-CCA-R3-HC, McMinn County (Tenn. Crim. App. May 19, 2006) (affirming habeas corpus court's remand because of void sentences imposed after jury trial to trial court for resentencing), app. filed (Tenn. June 30, 2006). Rather, in accord with existing law, we believe that the determination of whether a sentence is void or merely the subject of clerical error is a question better determined by examination of the face of the judgment and not the nature of the conviction proceedings. See McLaney v. Bell, 59 S.W.3d 90, 94 (Tenn. 2001) (holding that a judgment which is contrary to the sentencing act "is void or voidable depending upon whether the illegality of the sentence is evident on the face of the judgment or the record of the underlying proceedings").

In the present case, at the time of the petitioner's sentencing, Tennessee Code Annotated section 40-35-501(h)(1)¹ provided that release eligibility for an individual serving a life sentence for first degree murder was sixty percent of sixty years, and in no event less than twenty-five years.² Under the judgment of conviction, the petitioner received a life sentence with a Range I, thirty percent release eligibility classification. This sentence was in direct contravention of Code section 40-35-501(h)(1). A sentence which is contrary to statute is illegal. State v. Burkhart, 566 S.W.2d 871, 873 (Tenn. 1978). The illegality of the sentence rises to the level of voidness because the face of the judgment reveals that the petitioner was given a sentence which lies outside the limits of the Sentencing Reform Act of 1989. McLaney, 59 S.W.3d at 94; see McConnell v. State, 12 S.W.3d 795 (Tenn. 2000) (stating jurisdiction of court to impose sentence extends only to bounds of sentencing act); Coleman v. Morgan, 159 S.W.3d 887, 891-92 (Tenn. Crim. App. 2004) (reasoning that "an illegal, jurisdictionally defective sentence is one that is in direct contravention of the sentencing act").

We hold that the lower court erred in dismissing the petition. The petitioner's judgment expressed a void sentence, and he was entitled to habeas corpus relief. See Robert L. Leverette v. James A. Bowlen, No. E2003-02469-CCA-R3-HC, Bledsoe County (Tenn. Crim. App. Feb. 3, 2005) (affirming lower court's partial grant of habeas corpus relief to petitioner who had been illegally sentenced to thirty percent release eligibility sentences although his multiple rape convictions required one hundred percent service); Dewayne Cathey v. State, No. W2003-00411-CCA-R3-CO, Hardeman County (Tenn. Crim. App. July 28, 2004) (holding that habeas corpus petitioner was

¹The petitioner incorrectly cites Code section 40-35-501(g). That section pertains to release eligibility for repeat violent offenders serving life sentences.

²The statute was subsequently amended to provide for 100% service of a sentence for first degree murder. See T.C.A. § 40-35-501(i)(1), (2)(A).

entitled to relief from void sentence of life at Range I, thirty percent release eligibility because statute did not authorize life sentence to be served at thirty percent), app. denied (Tenn. Dec. 20, 2004).

In so holding, we reject the state's reliance on McConnell for the proposition that "offender classification and release eligibility are . . . non-jurisdictional." See McConnell, 12 S.W.3d at 798. The supreme court made this statement in McConnell in the context of discussing the ability of prosecutors and defendants to enter into plea agreements involving "hybrid" sentences which mix offender classification and release eligibility within the realm of the overall sentencing jurisdiction conferred on the courts by the legislature. See id.

We reverse the Wayne County Circuit Court's dismissal of the petition for habeas corpus relief. Upon our remand, that court shall transfer the case to the Davidson County Criminal Court for correction of the judgment to reflect the proper release eligibility classification.

JOSEPH M. TIPTON, JUDGE